

MRS. PATRICK H. BODKIN

FEBRUARY 8, 1927.—Committed to the Committee of the Whole House and ordered to be printed

Mr. SWING, from the Committee on the Public Lands, submitted the following

REPORT

[To accompany S. 1661]

The Committee on the Public Lands, to whom was referred the bill (S. 1661) proposing to confer jurisdiction upon the Court of Claims to hear and determine the claim of Mrs. Patrick H. Bodkin, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

Page 1, lines 7 and 8, strike out "all loss, liability, damage, and expense incurred by her in any manner in connection with a" and substitute in place thereof the following: "the value of the following-described land, exclusive of improvements, as of February 28, 1921, to wit, that certain".

Page 1, line 11, strike out "she" and insert "her husband, Patrick H. Bodkin, deceased".

Page 2, line 6, add the following: "*Provided*, That in considering the case the Court of Claims shall determine the value of the land in question at the date of judgment by the court adverse to Patrick H. Bodkin, also determine the value of the soldier's additional scrip, and deduct the latter from any awards made to the claimant."

The facts in this case are that one William B. Edwards made a homestead entry on the land in question on December 1, 1902, but failed to establish his residence thereafter on the land; that on January 31, 1908, Patrick H. Bodkin filed contest against Edwards's entry, charging abandonment and failure to establish residence. Following the hearing the local officers, on December 31, 1908, recommended cancellation of the entry, and the decision of the Commissioner of the General Land Office affirming that action was in turn sustained by the department decision of January 6, 1910, wherein it was stated:

From his own testimony (Edwards's) it clearly appears that he failed to comply with the law in the matter of residence. His actual home was in another county, where he qualified as a voter by swearing that he resided there.

On April 19, 1910, the contest was closed, and Edwards's entry was canceled. On May 18, 1910, Bodkin, in the exercise of his preference right as a successful contestant, filed homestead application for the land, which was eventually allowed June 1, 1912. Edwards also filed a second homestead entry, and the controversy again came before the department on appeal of Edwards from the rejection of his second homestead application. The department by its decision May 27, 1913, affirmed the action of the local land office, and said:

It further appears that Edwards, after his proven default as to residence in said contest case, went upon said lands, was residing there when his entry was canceled, and remained there thereafter; also that Bodkin, within six months after the allownace of his entry, attempted to establish residence thereon, but was forceably prevented by Edwards.

Bodkin by law was given six months after the allowance of his entry in which to establish his residence. When he attempted to do so he was run off the land by Edwards at the point of a shotgun. Bodkin, finding it impossible to go upon the land because of the actions of Edwards, relinquished his homestead entry and immediately filed application to locate soldier's additional rights on said tract, which application was allowed and patent issued to him for the land in question.

Edwards then brought suit in equity to have Bodkin declared a trustee holding title to the land for his benefit. The Supreme Court of the United States affirmed the decision of the Circuit Court of Appeals by merely holding that the case turned essentially on questions of fact which were concurred in by both the courts below. However, on reading the decisions it is found that the courts held that because Edwards was actually and physically upon the land at the time Bodkin filed his relinquishment that he, Edwards, by his physical presence acquired a right as an actual settler superior to that of Bodkin's as an applicant to locate soldier's additional rights on the land in controversy. True, it has been the practice, and is the law, to prefer an actual settler over claimants who seek to assert scrip rights, but all the evidence clearly shows that Edwards was on the land, not as a lawful settler, but as an actual trespasser at the time Bodkin filed his relinquishment and sought to locate soldier's additional rights in the nature of scrip. The uniform holding heretofore has been that trespassers acquire no rights, and particularly in this case where Bodkin was compelled to relinquish his homestead entry through the wrongful acts of Edwards, who forceably prevented him from initiating settlement upon the land.

It is felt by the committee that the decision of the court has done Bodkin an injury and injustice, for which his widow is entitled to relief.

The amendment suggested by the department is adopted.

The report of the department is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, February 8, 1923.

HON. ARTHUR CAPPER,
*Chairman Committee on Claims,
United States Senate.*

MY DEAR SENATOR: I have your letter of January 9, 1923, inclosing, for report, a copy of S. 3741, entitled "A bill conferring jurisdiction upon the Court of Claims to hear and determine the claim of Patrick H. Bodkin.

The bill proposes to allow six months from the date of its passage within which Patrick H. Bodkin may petition the United States Court of Claims for a hearing

of a claim for reimbursement for loss, liability, damage, and expense incurred by him in any manner in connection with a quarter section of land described as NE. $\frac{1}{4}$ sec. 11, T. 7 S., R. 22 E., S. B. M., in the State of California, for which land he has been issued a patent, and which he now holds as trustee for William B. Edwards in accordance with the decision of the United States Supreme Court in the case of *Bodkin v. Edwards* (255 U. S. 221); and to give the Court of Claims jurisdiction to hear and determine such claim.

As shown by the records, the land above described was on July 2, 1902, included in a second form withdrawal under the reclamation act of June 17, 1902 (32 Stat. 388), and on December 1, 1902, William B. Edwards made homestead entry thereof (Los Angeles, 02472), subject to the terms, conditions, and limitations of the said reclamation act. Thereafter, on September 8, 1903, the withdrawal was changed from the second form to one under the first form, authorized by section 3 of the reclamation act, supra. On January 31, 1908, while the land was included in the first form withdrawal, Patrick H. Bodkin filed contest against Edwards's entry based upon the charge of abandonment and failure to establish residence or make improvements. A hearing was had before the register and receiver on June 17, 1908, both parties being present and both submitting testimony. Following the hearing the local officers on December 31, 1908, rendered a decision recommending cancellation of the entry and by decision of June 25, 1909, the Commissioner of the General Land Office affirmed that action, which was sustained by departmental decision of January 6, 1910 (unreported), wherein it was stated:

"From his own testimony (Edwards) it clearly appears that he failed to comply with the law in the matter of residence. His actual home was in another county, where he qualified as a voter by swearing that he resided there. He stated that he visited the land about every six months, staying only a few days at a time, * * * evidently did considerable work on the land in cultivating, digging brush, etc.; but this work was after he had personal knowledge that the contest had been filed. He seems to think it a great wrong and injustice that another may reap the benefits of his labor. The department, under the plain facts in the case, especially the facts as shown from claimant's own frank testimony, is powerless to give relief."

In the meantime on April 23, 1909, in accordance with published notice, Edwards submitted final proof on his entry, which proof was properly suspended pending decision in the contest involving the entry. In this connection see the case of *Kratz v. Hurd* (36 L. D. 228).

By order of January 10, 1910, the land in question was restored from the reclamation withdrawal, to become subject to settlement on April 18, 1910, and to entry on May 18, 1910. On April 19, 1910, the contest case was closed and Edwards's entry was canceled. On May 18, 1910, Bodkin, in the exercise of his preference right as a successful contestant, filed homestead application for the land (Los Angeles, 010652), which was eventually allowed on June 1, 1912. However, on the same day Bodkin filed his homestead application, Edwards renewed his claim to the land, filing an application for second homestead entry (Los Angeles, 010585), and alleging settlement on the land on April 18, 1910. The controversy again came before the department on appeal by Edwards from the rejection of his second homestead application by the register and receiver and the Commissioner of the General Land Office. The department by its decision of May 27, 1913 (reported in 42 L. D. 172), affirmed the action below and on August 21, 1913 (42 L. D. 174), denied the motion for rehearing. In this connection the department said:

"It further appears in argument that Edwards, after his proven default as to residence in said contest case, went upon said lands, was residing there when his entry was canceled, and remained there thereafter; also that Bodkin, within six months after the allowance of his entry, attempted to establish residence thereon, but was forceably prevented by Edwards."

September 11, 1913, Edwards filed application to contest the entry of Bodkin, charging that—

"Bodkin filed on the land covered by the open and notorious settlement, residence, occupation, and cultivation of myself, W. B. Edwards, that my settlement right antedates any possible preference right claimed by Bodkin; that Bodkin never legally established his residence nor cultivated the land, and that his preference right was obtained and his entry made for speculative purposes, he having offered to sell to Mrs. Russell, of Homet, Calif., and others."

Edwards's said application to contest was rejected by the local officers on the ground (1) that the allegations were res adjudicata and (2) that they were insuf-

ficient to warrant a hearing. On October 31, 1913, the General Land Office, considering the appeal of Edwards from the action below, affirmed said action. Further appeal was filed and on March 20, 1914, this department affirmed the action of the General Land Office and later denied motion for rehearing; also on April 20, 1914, this department denied petition for the exercise of supervisory authority. In this decision, after reciting the prior action, it was said:

"It is stated in this petition that Bodkin relinquished his entry March 9, 1914, which Edwards contends operated to invest him with a right to reinstatement of his own prior entry for said land, canceled, and the case closed on Bodkin's contest, as above stated.

"The record before the department does not show Bodkin's relinquishment of his entry, the same doubtless not yet having been transmitted by the local officers. Admitting such to have been filed, however, no rights accrued to Edwards by virtue thereof, his contest affidavit then pending on appeal being insufficient in substance. His rights under his original entry for said lands ended upon cancellation of that entry under Bodkin's contest. This petition is denied."

Thereafter, on October 13, 1914, Edwards filed in the General Land Office a paper designated "motion to reinstate protest, accord a hearing to protestant, and remand case to register and receiver for decision in regular order," and on June 23, 1915, the department considered the matter on certiorari from the decision rendered by the General Land Office, December 23, 1914, dismissing the protest and allowing Bodkin's soldier's additional application, and the action taken was approved by the department and the case closed.

It appears further that on March 6, 1914, Bodkin relinquished his homestead entry made under section 2289, Revised Statutes, and immediately thereafter filed applications to locate soldier's additional rights on said tract under sections 2306, 2307, Revised Statutes, which applications were allowed and patented in due course under serial numbers as follows: 022869 for NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, 022870 for SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, and 022871 for W. $\frac{1}{2}$ NE. $\frac{1}{4}$, all Los Angeles series.

Edwards then brought suit in equity to have Bodkin declared a trustee holding title to the land for his benefit, and the history of that litigation is found in 249 Federal Reporter, at page 562, and 265 Federal Reporter, at page 621. The court gave judgment for Edwards, and Bodkin filed a further appeal to the Supreme Court of the United States where the decree was affirmed February 28, 1921, the court saying:

"The case as presented here turns essentially on questions of fact. Both courts below, on a review of the evidence, have found the facts in the same way. This court, under a settled rule, accepts such concurring findings unless clear error is shown. * * * No such error is shown by the record before us."

While it appears from the facts hereinbefore related that under regular proceedings Bodkin won his contest against Edwards and after making homestead entry, in the exercise of his preference right as a successful contestant, successfully defended such entry from the contest subsequently brought against him by Edwards, he later voluntarily relinquished his said homestead entry and thereupon all the rights he had gained in and to said land ceased and terminated and his subsequent filing of applications to locate soldier's additional rights, in the nature of scrip, was the beginning of a new and different claim to the land. In this connection it is noted that it was pointed out in the opinion of the circuit court of appeals that the equitable rule requiring that an actual settler be preferred over claimants who seek to assert scrip rights to the land should have been applied in favor of Edwards, who was found to have actively asserted his claim as a settler on the land during all these proceedings.

It further appears that Edwards's final proof testimony setting forth in detail his acts of settlement, residence, and improvements upon the land, which proof was submitted April 23, 1909, while his homestead entry was pending, was never considered, because the entry was then under contest, which resulted in the cancellation of the entry, and such ex parte testimony could not, under the rules of practice, be taken into consideration in determining the issues raised by the contest.

It further appears that the papers pertaining to the soldier's additional rights, which formed the basis of Bodkin's aforesaid entries under sections 2306-2307, Revised Statutes, were returned to his attorney pursuant to the request of said Bodkin under date of September 21, 1921, this department recognizing the fact that under the circumstances said rights are assignable and subject to relocation upon unappropriated public land, subject to the location of scrip rights generally.

It further appears that since the return of the assignment papers as indicated Bodkin has sold and assigned at least one of said soldier's additional rights to

the extent of 40 acres, and the same has been filed by his assignee in support of an application to enter a 40-acre tract of land under serial Elko 04678, now pending. In this connection it is further noted that since the time of Bodkin's purchase and filing of the rights used as a basis for the patents to the land which under the final decree of the United States Supreme Court he now holds only as trustee, has largely increased, and those rights having been found valid in connection with said patented locations, have now the nature of certified rights and will doubtless for this reason command a much greater price in the market than was originally paid by Bodkin for the same. Therefore, it is not believed that Bodkin can be heard to claim the loss of any property right in this respect and he apparently seeks reimbursement in connection with the litigation in this case, which was a private transaction between the parties, in which the United States was interested only incidentally.

As hereinbefore pointed out, the proceedings before this department were regular and the decisions followed what then appeared to be the facts and the law in the case, and a careful examination of the facts shown by the records does not disclose any injustice done Bodkin for which the United States is either legally or equitably liable.

If, however, Congress should be inclined to enact legislation authorizing Bodkin to take his case before the Court of Claims for consideration, the bill should, in view of the fact that Bodkin has secured the return of the soldiers' additional scrip, which possesses a substantial monetary value, be amended so as to provide that in considering the case the Court of Claims should determine the value of the land in question at the date of judgment by the court adverse to Bodkin, also determine the value of the soldiers' additional scrip, and deduct the latter from any awards made to the claimant.

Respectfully,

ALBERT B. FALL, *Secretary.*

